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LAW OFFICES
FRITZ R. KAHN, P.C.
EIGHTH FLOOR
1920 N STREET, N.W.
WASHINGTON, D.C. 20036-1601

(202) 263-4152
FAX (202) 331-8330
e-mail: xiccgc@worldnet.att.net

ORIGINAL



August 13, 2003

VIA HAND DELIVERY - RETURN COPY

Hon. Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, NW (7th fl.)
Washington, DC 20423-0001

ENTERED
Office of Proceedings

AUG 13 2003

Part of
Public Record

Dear Secretary Williams:

Enclosed for filing in STB Finance Docket No. 34392, New Jersey Rail Carrier LLC—Acquisition and Operation Exemption—Former Columbia Terminals, Kearny, NJ, are the original and ten copies of the Reply of New Jersey Rail Carrier LLC.

An additional copy of the Reply is enclosed for you to stamp to acknowledge your receipt of it and to return to me via the messenger.

Sincerely yours,


Fritz R. Kahn

enc.

cc: Edward D. Greenberg, Esq.

SURFACE TRANSPORTATION BOARD
WASHINGTON, D.C.

ORIGINAL

STB Finance Docket No. 34392

NEW JERSEY RAIL CARRIER LLC
-- ACQUISITION AND OPERATION EXEMPTION --
FORMER COLUMBIA TERMINALS, KEARNY, NJ



REPLY
OF
NEW JERSEY RAIL CARRIER LLC

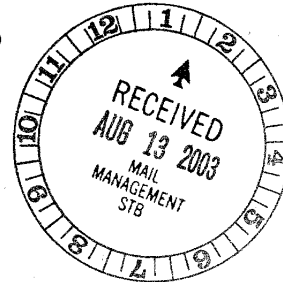
Fritz R. Kahn
Fritz R. Kahn, P.C.
1920 N Street, NW (8th fl.)
Washington, DC 20036-1601
Tel.: (202) 263-4152

Attorney for

NEW JERSEY RAIL CARRIER LLC

Dated: August 13, 2003

BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, D.C.



STB Finance Docket No. 34392

NEW JERSEY RAIL CARRIER LLC
-- ACQUISITION AND OPERATION EXEMPTION --
FORMER COLUMBIA TERMINALS, KEARNY, NJ

REPLY
OF
NEW JERSEY RAIL CARRIER LLC

New Jersey Rail Carrier LLC ("NJRC"), pursuant to 49 C.F.R. 1104.13, replies in opposition to the letter request of the New Jersey Department of Environmental Protection ("NJDEP"), dated August 12, 2003, seeking a stay of the effective date of the Verified Notice of Exemption, filed by NJRC on August 7, 2003, and in support thereof NJRC states as follows:

1. The standards for securing a stay are well established. See, Washington Metropolitan Area Transit Comm. v. Holiday Tours, Inc., 559 F.2d 841 (D.C. Cir. 1977) and Virginia Petroleum Jobbers Association v. FPC, 259 F.2d 921 (D.C. Cir. 1958). NJDEP has not even addressed the standards and much less satisfied them. NJDEP's request, accordingly, should be denied. See, STB Finance Docket No. 34085, Keokuk Junction Railway Co.-Acquisition and Operation Exemption-West End of Toledo, Peoria and Western Railway Corporation, served August 23, 2001; STB Finance Docket No. 33995, SF&L Railway, Inc.-Acquisition and

Operation Exemption–Toledo, Peoria and Western Railway Corporation Between La Harpe and and Peoria, IL, served January 16, 2001; STB Finance Docket No. 33990, C & C Railroad, Inc.–Operation Exemption–Centerpoint Properties, L.L.C., served January 8, 2001. NJDEP always is free to file a petition to revoke the exemption if, as NJRC asks, the exemption is allowed to become effective as scheduled.

2. NJDEP contends that NJRC's Verified Notice of Exemption "contains insufficient information to enable the Board to determine that NJRC is in fact a rail carrier." NJDEP however, fails to indicate what data called for by the pertinent Board regulation, 49 C.F.R. 1550.33, NJRC did not provide in its Notice. NJRC's Notice was as complete and as detailed as those which routinely are allowed by the Board to become effective. See, STB Finance Docket No. 34207, CHS Holdings, Inc.–Acquisition and Operation Exemption–J.K. Line, Inc., served June 20, 2002; STB Finance Docket No. 33927, SMS Rail Service, Inc.–Acquisition and Operation Exemption–Valero Refining Company–New Jersey, served September 22, 2000; STB Finance Docket No. 33764, Rock & Rail, Inc.–Acquisition and Operation Exemption–Railroad Lines near Kelker, El Paso County, CO, served June 25, 1999.

3. NJRC intends to operate as a common carrier railroad, handling intermodal shipments in the industrial park which it will serve. In that respect, it will be functioning exactly as other railroads serving industrial parks. See, STB Finance Docket No. 34145, Bulkmatic Railroad Corporation–Acquisition and Operation Exemption–Bulkmatic Transport Company, served November 19, 2002; STB Finance Docket No. 33764, Rock & Rail, Inc.–Acquisition and Operation Exemption–Railroad Lines near Kelker, El Paso County, CO, served June 25, 1999; STB Finance Docket No. 33414, Penn-Jersey Rail Lines, Inc.–Acquisition and Operation

Exemption-WMI Properties, Inc., served June 24, 1997. Indeed, NJRC has been working with Norfolk Southern Railway Company's Industrial Development Department to publicize NJRC as an intermodal transfer facility on the railroad's web page.

4. NJRC proposes to handle all manner of freight tendered for intermodal transportation, lumber, chemicals, aggregates and so on. It has made no secret of the fact that it expects to handle containerized demolition debris. Indeed, it so advised NJDEP, by letter dated June 12, 2003, a copy of which is attached. NJDEP, in the intervening two month period, did not respond that it had any problem with NJRC's handling of containerized demolition debris as it proposed to do.

5. If NJDEP believes NJRC requires a permit for the transfer of containerized demolition debris, it is well able to use its processes to enforce its regulations. It should not look to the Board to construe and enforce NJDEP's regulations.

6. Finally, NJDEP attempts to malign the principals behind applicant, Messrs. Anthony Rizzo, Jr., and Darren Rizzo. That they formerly were qualified as key men for a waste transfer facility, Ecology Systems, Inc., has no bearing on whether they are competent to operate an industrial park railroad. Certainly, their father has no connection with NJRC, as he is retired and living in Florida. The ascribing of guilt by association does not become the NJDEP.

WHEREFORE, New Jersey Rail Carrier LLC asks that the stay request of the New Jersey Department of Environmental Protection be denied.

Respectfully submitted,

NEW JERSEY RAIL CARRIER LLC

By its attorney,




Fritz R. Kahn
Fritz R. Kahn, P.C.
1920 N Street, NW (8th fl.)
Washington, DC 20036-1601
Tel.: (202) 263-4152

Dated: August 13, 2003

CERTIFICATE OF SERVICE

I certify that I this day have served a copy of the foregoing Reply by facsimile transmitting a copy to Edward D. Greenberg, Esq., counsel for NJDEP.

Dated at Washington, DC, this 13th day of August 2003.


Fritz R. Kahn